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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 5 1992

Federal Communications Commission
Office of the Secretary

In re Petition of

COMMUNICATIONS SATELLITE CORPORATION

For Repeal of Section 25.131(j)(1) of
the Commission's Rules

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RM-7931

REPLY OF
COMMUNICATIONS SATELLITE CORPORATION

Communications Satellite Corporation (COMSAT), through its
COMSAT World Systems business unit, hereby replies to the
"partial opposition" of Pan American Satellite (PanAmSat) to
COMSAT's above-captioned request for repeal of Section
25.131(j)(1) of the Commission's Rules.¹

Section 25.131(j)(1) currently specifies that receive-only
earth stations operating with INTELSAT space stations must be
licensed (except for receive-only earth stations used to receive

¹ COMSAT's petition for repeal and interim waiver of
Section 25.131(j)(1) has been the subject of two separate public
notices. In addition to PanAmSat, the parties filing new
comments in response to the Commission's second notice were IDB
Communications Group, Inc., which supported COMSAT's request for
repeal, and GTE Spacenet Corporation, which did not oppose that
request. (GTE did, however, oppose total repeal of Section
25.131(j) because of concerns relating to transborder service
applications.) Brightstar Communications Ltd., which had already
supported COMSAT's waiver request, also supported the request for
repeal by refiling its previous comments. GE Americom, which
along with PanAmSat had opposed COMSAT's waiver request, did not
file any new comments on the request for repeal. To the extent
GE's previous filing was intended to oppose repeal as well as
waiver, COMSAT hereby incorporates by reference its reply of
April 13, 1992, which fully responded to all of GE's arguments.
See Attachment A hereto.

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INTELNET I services). In its petition, COMSAT demonstrated that the same reasoning which long ago led the Commission to eliminate licensing for domestic receive-only earth stations and INTELNET I earth stations also applies to other types of international receive-only earth stations. In particular, COMSAT pointed out: (1) that receive-only earth stations are not "satellite terminal stations" within the meaning of the Satellite Act; (2) that receive-only earth stations are passive devices which are incapable of causing harmful interference or creating spectrum conservation problems; (3) that INTELSAT has no requirement that receive-only earth stations be licensed; (4) that many other countries, including the members of the European Community, already permit unlicensed receive-only earth stations to access international space stations; and (5) that Section 605 of the Communications Act gives the Commission ample authority to meet its obligations under the ITU radio regulations to prevent the unauthorized reception of radio signals.

COMSAT also pointed out in its petition that continuing to impose licensing requirements on international receive-only earth stations would place unreasonable burdens on U.S. customers and put unnecessary strain on the Commission's own resources. In contrast, COMSAT stated, repeal of these requirements would further the Commission's policy of eliminating unnecessary regulations, and would also serve the public interest by increasing service options, reducing customer cost, promoting the

rapid introduction of service and freeing up Commission resources for other purposes.

For all these reasons, COMSAT urged the Commission to repeal Section 25.131(j)(1). COMSAT made it clear, however, that it supports the elimination of licensing requirements for all receive-only earth stations operating with international space stations -- and it added that repeal would be particularly appropriate at this time, given the Administration's and the Commission's efforts to move quickly to eliminate unnecessary regulations that impair growth and burden the U.S. economy. In this regard, COMSAT fully supports Chairman Sikes's March 12, 1992 call for regulatory reform initiatives including, "[i]n the international common carrier arena, proceedings to explore relaxing international Section 214 licensing requirements and licensing requirements for receive-only earth stations."²

Although PanAmSat describes its filing as a "partial" opposition to COMSAT's petition, it is in fact totally opposed to any relaxation of Section 25.131(j) that would benefit COMSAT or COMSAT's customers. Its support for repeal is limited solely to that portion of the rule affecting receive-only earth stations operating with non-INTELSAT satellites. According to PanAmSat, receive-only earth stations (other than INTELNET I earth stations) that communicate with INTELSAT satellites raise

² See Attachment B hereto.

"special concerns, which should be considered only in a more comprehensive proceeding."³ This claim is specious and self-serving, and is clearly intended to impede COMSAT's ability to compete with PanAmSat by placing COMSAT's customers at a disadvantage relative to PanAmSat's customers. Moreover, PanAmSat's arguments are completely without merit, for the reasons stated below.

In its 1986 Equatorial decision,⁴ and again in its 1988 Reuters ruling,⁵ the Commission concluded (1) that Section 201(c)(7) of the Satellite Act does not impose any limitation on its general authority to license radio station stations under Title III of the Communications Act, and (2) that, in any event, not all earth stations are "satellite terminal stations" within the meaning of Section 201(c)(7).⁶ Those conclusions apply with equal force here. Receive-only earth stations are not, and by their very nature cannot be, an integral part of any terrestrial

³ PanAmSat at 1.

⁴ Deregulation of Receive-Only Satellite Earth Stations Operating with the INTELSAT Global Communications Satellite System, FCC 86-214 (released May 19, 1986).

⁵ Licensing under Title III of the Communications Act of 1934, as amended, of Private Transmit/Receive Earth Stations Operating with the INTELSAT Global Communications Satellite System, 3 FCC Rcd 1585 (1988), aff'd, TRT Telecommunications Corp. v. FCC, 876 F.2d 134 (D.C. Cir. 1989).

⁶ In reaching those conclusions, the Commission largely accepted the legal theory set forth by Equatorial in its original Petition for Rulemaking, RM-4845 (filed Aug. 19, 1984; counsel of record, Goldberg & Spector).

communications system -- and that is so whether the services provided via those earth stations are INTELNET services, IBS services or other services such as video. Accordingly, there is no rational basis for distinguishing the INTELNET and IBS services already covered by the Equatorial and Reuters rulings from the other services that would be covered by repeal of Section 25.131(j)(1).⁷

The Court of Appeals has specifically upheld the Commission's determination that earth stations not operationally connected with terrestrial communications systems are not "satellite terminal stations."⁸ Thus, there is no merit to PanAmSat's claim that COMSAT's petition seeks relief that is inconsistent with the Satellite Act. Moreover, there is no merit to PanAmSat's claim that this issue must be decided in a "COMSAT proceeding of broader applicability."⁹ COMSAT, like PanAmSat or anyone else, is entitled to seek particularized relief from the Commission when dealing with discrete subject matters, and there

⁷ The Commission's decisions in Equatorial and Reuters as to the scope and interpretation of Section 201(c)(7) are clear and definitive. Thus, whether COMSAT or anyone else took a different legal position before those decisions were rendered is irrelevant. The only relevant issue relates to U.S. obligations to INTELSAT, and COMSAT has quite clearly stated in its petition that repeal of Section 25.131(j)(1) would not be inconsistent with those obligations. Accordingly, COMSAT need not be required to address, any further than it already has, whether repeal would be consistent with the INTELSAT Agreement or with INTELSAT charging policies. See PanAmSat at 5.

⁸ TRT v. FCC, supra n.3.

⁹ PanAmSat at 3.

is no reason to combine COMSAT's various unrelated requests for relief into a single proceeding. The only result of initiating such a comprehensive proceeding would be to delay granting any relief to COMSAT and its customers -- and while that would clearly suit PanAmSat, it would just as clearly not be in the public interest.

Comments fully supporting COMSAT's petition have been filed by Brightstar, Scientific Atlanta and IDB. In addition, GTE Spacenet, which previously raised concerns about COMSAT's request, has now stated that it does not oppose repeal or waiver of that portion of Section 25.131(j) relating to INTELSAT. The only parties opposing COMSAT's request are PanAmSat and GE Americom, both of whom argue that licensing should not be required for receive-only access to their satellites, but should be required for identical access to INTELSAT. These arguments have no basis in law or policy, and are nothing more than a transparent attempt to impede COMSAT's ability to serve its customers and compete with other satellite systems.

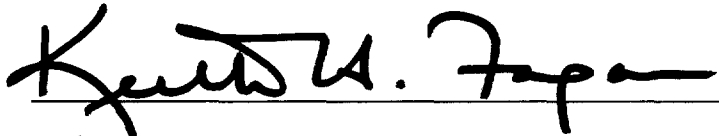
In sum, the record in this proceeding fully supports the immediate grant of an interim waiver of Section 25.131(j)(1), as well as prompt Commission action to repeal this rule on a permanent basis. The experience gained in eliminating licensing requirements for domestic receive-only earth stations, as well as for INTELNET I stations, also demonstrates convincingly that such

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action would be in the public interest. For all these reasons,
the Commission should act promptly to grant COMSAT's petition.

Respectfully submitted,

COMMUNICATIONS SATELLITE CORPORATION
COMSAT World Systems

A handwritten signature in black ink, reading "Keith H. Fagan", is written over a horizontal line.

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May 5, 1992

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DUPLICATE ORIGINAL

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Washington, D.C. 20554

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SECRETARY

In re Petition of)
)
COMMUNICATIONS SATELLITE CORPORATION)
) File No. I-S-P-92-004
For Waiver of Section 25.131(j)(1) of)
the Commission's Rules As It Applies)
to Services Provided via the INTELSAT)
K Satellite)

REPLY OF
COMMUNICATIONS SATELLITE CORPORATION

Communications Satellite Corporation (COMSAT), through its COMSAT World Systems business unit, hereby files this reply to the comments of other parties regarding its petition for waiver of Section 25.131(j)(1) of the Commission's Rules. Comments in support of the waiver were filed by Brightstar Communications, Ltd. and Scientific Atlanta; comments raising "concerns" but not opposing the waiver were filed by GTE Spacenet Corporation; and oppositions were filed by Pan American Satellite and GE American Communications, Inc.

Brightstar and SA Comments. The comments of Brightstar and Scientific Atlanta reinforce the points made by COMSAT in its petition. As both parties note, removal of the licensing requirement for international receive-only earth stations will serve the public interest by enabling more efficient and less costly reception of international services, thereby meeting the needs of U.S. customers. Removal of this requirement will also stimulate demand for receive-only antennas and foster a larger

market for manufacturers. In addition, it will eliminate unnecessary paperwork for consumers and help reduce the strain on the Commission's own resources.¹

As the Commission has already held, and as Brightstar correctly emphasizes, there is no statutory requirement that international receive-only earth stations be licensed.² Moreover, from a policy standpoint, there is no potential for harmful interference by receive-only earth stations and, thus, little justification for their licensing.³ Finally, it has now been established that the elimination of current licensing requirements will not be inconsistent with U.S. obligations to INTELSAT and Inmarsat -- which was the Commission's sole concern when it last addressed this matter.⁴ Accordingly, the record is now sufficient to demonstrate that the public interest will be served by repeal and interim waiver of Section 25.131(j)(1).

GTE Spacenet Comments. GTE Spacenet requests that COMSAT's waiver be conditioned to ensure that the INTELSAT K will not be

¹ Brightstar at 7; SA at 1.

² Brightstar at 3; see Deregulation of Receive-Only Satellite Earth Stations Operating with the INTELSAT Global Communications Satellite System, FCC 86-214 (released May 19, 1986) ("Equatorial").

³ SA at 1; see also Equatorial, supra.

⁴ Brightstar at 4; see Amendment of Part 25 of the Commission's Rules and Regulations, 6 FCC Rcd 2806, 2807-08 (1991) ("Part 25 Order").

used to provide U.S. domestic service.⁵ We are not aware that anyone is interested in using the INTELSAT K for this purpose, and we believe that such interest is unlikely, given the technical characteristics of the satellite. Accordingly, our petition addressed only international communications transmitted from abroad and received in the United States.

In any event, COMSAT must be authorized by the Commission on a case-by-case basis before it can provide service between U.S. points. In the unlikely event that someone did propose to use the INTELSAT K for a U.S.-to-U.S. service, COMSAT would have to apply for such authority before it could provide that service, and if GTE Spacenet objected to the proposal, it could oppose COMSAT's application. We therefore believe that the condition requested by GTE Spacenet is superfluous.

PanAmSat Opposition. PanAmSat asserts that a waiver should be denied because COMSAT has not come forth with "particular facts" that distinguish receive-only communications via INTELSAT K from receive-only communications via other INTELSAT satellites.⁶ Given the nature of COMSAT's request, this is a pointless objection. COMSAT has already stated that Section 25.131(j) should be repealed for all INTELSAT satellites, and indeed for all international satellites, including PanAmSat's.

⁵ GTE Spacenet at 2.

⁶ PanAmSat at 2.

Therefore, the same facts that COMSAT presented in support of repeal also support an immediate waiver.

There are, however, "particular facts" that distinguish the INTELSAT K from other satellites -- specifically the imminent launch of the INTELSAT K and its higher power, which makes it especially suitable for receive-only applications. Our petition made specific reference to those "particular facts"⁷ and, in our view, it is precisely because of those facts that PanAmSat has opposed COMSAT's waiver. Since Section 25.131(j) is applicable to PanAmSat as well as to COMSAT, both parties' long-term interests would clearly be served by repeal of the rule. In the short term, however, COMSAT is the one with potential customers interested in receive-only service.

The Commission, therefore, should recognize PanAmSat's opposition for what it is -- yet another attempt to use the regulatory process to forestall competition from the INTELSAT K. Having opposed our request to participate in the construction of the INTELSAT K,⁸ as well as our tariff for that satellite,⁹ PanAmSat now seeks to prevent COMSAT from facilitating access to the INTELSAT K by U.S. customers. We respectfully suggest that

⁷ Petition at 6-7.

⁸ See Communications Satellite Corporation, 5 FCC Rcd 5952 (1990).

⁹ See Communications Satellite Corporation, 6 FCC Rcd 4979 (1991).

it is time for PanAmSat to start competing with the INTELSAT K in the marketplace rather than in the regulatory arena.

GE Americom Opposition. GE Americom's filing raises a host of issues with respect to COMSAT's waiver request, but the key to its position may be found in the last paragraph, where GE states that "a waiver is not necessary to ensure provision of INTELSAT K programming to the public."¹⁰ All that is necessary, according to GE, is for INTELSAT K signals to be downlinked through a licensed antenna and retransmitted through a domestic satellite to unregulated domestic TVROs. In other words, unlicensed reception of INTELSAT K signals is not a problem -- as long as those signals are first retransmitted on a domestic satellite. It would be hard to imagine a more self-serving argument.

One of the major competitive advantages of the INTELSAT K is that, in the eastern half of the United States, it eliminates the need for domestic retransmission of signals originating in Europe. GE, however, seeks to negate that advantage by retaining a licensing scheme that serves no purpose other than to burden users of international satellites and to require them to double-hop on domsats unless they go through the Commission's licensing process. The Commission has repeatedly stated, particularly in the transborder context, that it will not force users into service arrangements that involve unnecessary duplication of

¹⁰ GE at 10-11.

facilities. It should reach the same result here by rejecting GE's plea for preferential treatment of domestic satellite operators that would result in higher costs and inefficiencies for users.

GE's specific arguments opposing a waiver are as weak as its motives are transparent. GE first asserts that Section 25.131(j) should not be waived because "the Commission has no control over foreign programmers except through its licensing authority."¹¹ But the purpose of licensing international receive-only earth stations was never to control foreign programmers; rather, it was to ensure that the United States met its obligations to INTELSAT and Inmarsat.¹² Moreover, if the rule's purpose were to control foreign programmers, it would be singularly ineffective, because, as GE has made clear, the rule can be evaded simply by retransmitting via domsats. In sum, the need to control foreign transmissions has never been, and should not be, a justification for retaining this rule -- particularly now, when the U.S. is seeking to expand opportunities for the reception of U.S.-originated programming overseas.

In this regard, GE also claims that "lack of reciprocity" in Europe is a factor that must be weighed heavily against

¹¹ GE at 3.

¹² Part 25 Order, supra. See also, e.g., Deregulation of Receive-Only Domestic Earth Stations, 74 FCC 2d 205, 219 n.27 (1979).

COMSAT's request.¹³ According to GE, COMSAT's petition did not mention that, in the European Community, unlicensed receive-only stations cannot be used to access U.S. satellites that might wish to compete with INTELSAT. Contrary to GE's claims, however, the relevant EC directive simply eliminates licensing for receive-only antennas; it does not distinguish among satellites, and therefore cannot be interpreted as discriminating against non-INTELSAT operators.¹⁴ Thus, "reciprocity" considerations support, rather than undermine, COMSAT's request for a waiver.

GE also asserts that, if this waiver is granted, COMSAT will be "radically transform[ed]" from a supplier of INTELSAT space segment into a "direct competitor in the emerging U.S. direct-to-home market."¹⁵ This claim is pure hyperbole. No change in COMSAT's role is contemplated; it will remain a space segment supplier, just as GE is a space segment supplier. The only difference will be that, once this rule is lifted, COMSAT's customers for international services, like GE's customers for domestic services, will not have to deal with burdensome and unnecessary licensing requirements. Moreover, as indicated above in connection with GTE Spacenet's comments, COMSAT does not envision that any of its customers would propose to use the

¹³ GE at 5.

¹⁴ Commission Directive of 16 May 1988 on Competition in the Markets in Telecommunications Equipment (88/301/EEC; OJ L131/73, 27.05.88).

¹⁵ GE at 5-6.

INTELSAT K for U.S. domestic service, and even if they did, COMSAT would have to get specific authority to provide such service. Accordingly, GE need not fear that COMSAT will be free to compete in the U.S. domestic market without further Commission approval.

Finally, GE asserts¹⁶ that grant of a waiver would prejudice the outcome of the Commission's rulemaking proceeding, but that too is incorrect. Since receive-only earth stations are passive devices,¹⁷ no harm would result even if a few unlicensed stations were permitted and the Commission subsequently concluded that such stations must be licensed. The only risk in such a situation would be borne by those persons who had obtained receive-only stations prior to the conclusion of the rulemaking, and it would be a simple matter to require that such persons be informed of the possibility that they might subsequently have to apply for a license.

For the foregoing reasons, and for the reasons stated in COMSAT's petition, the Commission should waive Section 25.131(j) immediately to permit unlicensed receive-only earth stations to operate with the INTELSAT K satellite, and should thereafter move


¹⁶ GE at 6.

¹⁷ Petition at 4-5; see also Equatorial, supra, at 10-11.

to repeal the rule on a permanent basis for all receive-only
earth stations operating with international satellites.

Respectfully submitted,

COMMUNICATIONS SATELLITE CORPORATION
COMSAT World Systems

A handwritten signature in black ink, appearing to read "Keith H. Fagan", with a long horizontal flourish extending to the right.

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April 13, 1992

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STATEMENT OF FCC CHAIRMAN

ALFRED C. SIKES

MARCH 12, 1992

FCC Regulatory Reform Initiatives

In early January, my fellow Commissioners and I exchanged ideas about how we as an agency could improve the way we do business -- for example, by eliminating unnecessary regulatory barriers to service, innovation and investment. I'm sure all of us agree it is vital that an agency charged with promoting the public interest periodically review its rules to see how it can improve its regulatory program.

Then, on January 28, President Bush issued a memorandum challenging all federal agencies -- on a voluntary basis -- to review their regulations and programs toward essentially the same end. In essence, the President called on agencies to "weed out unnecessary and burdensome regulations, which impose needless costs on consumers and substantially impede economic growth."

To this end, each of my colleagues has offered good suggestions. In addition, I have asked the Commission's General Counsel, Robert L. Pettit, to serve as the official to coordinate a working group from the bureaus and offices charged with a top-to-bottom review of Commission regulations and programs. And the bureaus and offices have been very responsive and have offered a number of worthy proposals.

As a result of these discussions, I am today announcing three broadly gauged regulatory reform initiatives designed to:

- promote investment in communications industries,
- speed up the Commission's licensing process, and
- reduce unnecessary paperwork and other burdens on communications companies.

Collectively, these initiatives are designed to promote growth and ultimately promote greater competition and choice in communications for the American public.

I. Communications Investment Initiative

The communications investment initiative is designed to increase investment in communications industries by reducing regulatory impediments to such investments. Three such items are on today's agenda -- one involves proposed revisions to our radio multiple ownership rules; another explores ways to increase investment in broadcasting by relaxing our attribution and security interest rules; and a third would implement the President's separate

satellite decision by permitting interconnection of private lines provided over separate systems with the public switched network, and providing for elimination of the "PSN" restriction by 1997.

In addition, I intend to expedite action on several other major proceedings that could significantly increase opportunities for investment in communications. Fortunately, the Commission has been working on these issues. Therefore, I am today instructing the bureau and office chiefs to submit for the Commission's consideration actions to promote investment in communications industries. While this list is not exhaustive, I am directing the appropriate bureaus and offices within the next few months to bring forward the following:

- ° a final recommendation to foster competition in local exchange telephone service and consider the implications of such competition on local service
- ° a final recommendation in the cable/telco proceeding
- ° a final recommendation in the cable-network cross-ownership proceeding
- ° a second report and order on HDTV
- ° a proposal to explore incentive-based regulation for small and mid-sized LECs
- ° a proposal to simplify rate of return regulation for carriers not subject to price caps
- ° a proposal to reform the rules pertaining to broadcast television, and
- ° proposals concerning implementation of personal communications service and LEOs

II. Licensing Initiative

The licensing, or as I think of it, "the authorization of investment," initiative is designed to look at ways to expedite the Commission's licensing function or, stated differently, ways to expedite the FCC's authorization of investment in communications industries. Quite simply, every day that an application remains at the Commission is a day that the investment represented by that application is not being made. One such item is before us on today's agenda -- a proposal to improve how we choose among competing applicants for broadcast facilities.

As with our investment initiative, I am also today directing the bureau and office chiefs to accelerate their efforts to improve application processing -- through both internal processing changes and appropriate substantive deregulation. The Commission's Managing Director, Andrew S. Fishel, will be coordinating our effort to improve internal processing efficiency.

Again, while this list is not exhaustive, I am instructing the bureaus to bring to the Commission for consideration over the next few months specific initiatives in the following areas:

- A specific recommendation to speed the processing of MMDS applications.
- In the international common carrier arena, proceedings to explore relaxing international Section 214 authorization requirements and licensing requirements for receive-only earth stations.
- In the land mobile area, a proceeding to streamline Part 22 land mobile processing rules.
- In the specialized mobile radio (SMR) arena, a similar streamlining proceeding.
- In the private radio services generally, an initiative that would allow multiple license holders to file consolidated (or umbrella) renewal applications.
- In the broadcast arena, proceedings to conform license renewals for main stations and associated translators and to simplify and expedite the FM upgrading process.

III. Paperwork/Burden Reduction Initiative

The third of our regulatory initiatives, reducing unnecessary paperwork burdens, is something to which this Commission historically has been committed in its many "underbrush" proceedings. One item on today's agenda, the cellular fill-in report and order, would further this objective by dropping requirements that cellular licensees receive FCC approval before adding sites to pre-approved service areas.

The bureau and office chiefs have already made numerous suggestions exploring the elimination, consolidation or simplification of the various forms and reporting requirements applicable to services in their areas of expertise, and I am asking them to bring those ideas forward for Commission consideration. Typical of the candidates for consideration are:

- common carrier Form M filings, to the extent that the information provided on such forms is not useful or duplicates the more comprehensive ARMIS reports;
- the Mass Media Bureau's ownership reporting requirements, which might be simplified without adversely affecting the public interest;
- private radio "end user lists", which must be submitted by licensees of shared mobile systems even though they are not used by the staff and are out-of-date almost as soon as they are filed.